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09/842,754	04/26/2001	Richard A. Pineau	**BA-0328	8266

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/842,754
Filing Date: April 26, 2001
Appellant(s): PINEAU ET AL.

Wendy A. Choi
Reg. No. 36,697
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/28/07 appealing from the Office action mailed 6/30/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Kagawa	US 5,995,239	Nov. 30, 1999
Kleinrock	US 6,795,852	Sep. 21, 2004 (filed Sep. 11, 1996)
Steinberg	WO 00/01138	Jan. 6, 2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-5, 7-15, and 19-20, are rejected under 35 U.S.C. 103(a) as being unpatentable over Steinberg et al. (WO 00/01138; hereinafter Steinberg) and Kleinrock et al. (U.S. Patent Number 6,795,8521; hereinafter Kleinrock).

With regard to claims 1, 2, 5, and 9-15, Steinberg disclosed a method of transmitting to a remote node (18, fig. 1, page 7, lines 16-18; server) in a data communications network (16, fig. 1), digital images from an image data source (12, fig. 1; digital camera), comprising the steps of: accessing and transferring one image or a plurality of images from the image data source (abstract; providing the customer a specific apparatus (10, fig. 1, page 7, line 14), said apparatus having identifying information stored in a memory thereof', transmitting, receiving and storing, at the remote node of the data communications network, said image or plurality of images and

said identifying information (page 8, lines 27-34; account number identifies the user in the system).

However, Steinberg failed to specifically recite automatically determining a closest entry point into the data communications network. Nevertheless, it was well known in the art at the time of the invention to automatically determine the closest entry point into a data communication network, as evidenced by Kleinrock. In an analogous art, Kleinrock disclosed an automatic network connection system which:

- Automatically sending information from said communication apparatus via a toll fee link, to the data communication network to ascertain the location of said communication apparatus (Col 4, lines 23-25),
- at the data network, automatically recognizing the location of said communication apparatus, comparing the location a stored list of network entry points, selecting the closest entry point (e.g. ISP) and transmitting back to the client the contact information for the selected closest entry point (Col 4, lines 25-28); and
- at said communication apparatus, automatically using the provided contact information to establish communication with the data network via the closest entry point (Col 4, lines 28-32) (See also Col 6, lines 21-54).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the automatic connection system disclosed by Kleinrock, within Steinberg's system so users can be automatically connected to the most appropriate

phone number and thereby avoid enormous long distance telephone charges (Kleinrock Col 1, lines 25-33).

With regard to claims 3-4 and 19-20, Kleinrock disclosed automatically determining said entry point, GPS or caller ID information is used (Col 5, line 60).

With regard to claim 7, Steinberg teaches the automatic transmission of the image or plurality of images from the apparatus to the remote node of the communication network (page 12, lines 24-29). Steinberg does not specifically recite upon detecting an interrupting signal and re-attempting transmission after a waiting period following an interruption. However, Steinberg teaches the system automatically attempts to re-connect with the remote server after a connection fails to establish (page 17, lines 13-14). Hence, it would have been advantageous to one of ordinary skill in the art to attempt a re-connection with the remote server at a later time after an interruption of service in order to complete the data transmission when the data line is not busy or heavily used.

As per claim 8, Steinberg teaches the system attempts to check at regular intervals to determine whether the remote node is connected and ready to receive data (page 18, lines 20-21 and 24-26). Once the two systems are in sync with each other, the device sends data images to the remote node for display, storage, print or share as addressed in above claims and also further disclosed on page 20, lines 9-14).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steinberg et al. (WO 00/01138; hereinafter Steinberg) and Kleinrock et al. (U.S. Patent Number 6,795,8521; hereinafter Kleinrock) as applied above and in further view of Kawaga et al. (U.S. Patent Number 5,995,239; hereinafter Kagawa).

As per claim 6, Steinberg does not specifically recite the plurality of transmission rates of data images between the system and the remote node. However, Kawaga teaches when data is transmitted successfully, the system increases the transmission rate to increase the mean 'transmission rate. However, when an error occurs in received image data or when the condition of the network is poor, the system will decrease the transmission rate. The rate is shifted up again if the image data is free from errors or if the circuit condition is desirable (col. 11, ll. 9-34; col. 11, l. 61 to col. 12, l. 16). Hence, it would have been obvious to one of ordinary skill in the art to be motivated to introduce an alternative or obvious modification of Kawaga teachings to enhance the communication rate and reliability of data transmission as disclosed in col. 12, lines 14-16.

(10) Response to Argument

As an initial matter, it is noted that Appellants have failed to number the pages of the Brief filed 8/28/2007. All references to page numbers of the Brief are based upon the page number in the electronic file wrapper of the present application.

A summary of the various points raised by Appellants are presented below, and each point is addressed individually by the Examiner:

Regarding claims 1-5, 7-15, 19 and 20, Appellants argue:

a) The combination of Steinberg and Kleinrock is improper because the references do not provide "a teaching or suggestion which would enable those skilled in the art ... to know of the claimed invention" (Br. 11).

b) Kleinrock does not suggest "anything with respect to an apparatus and method that enables the users of digital image acquisition devices to obtain hard copy output from or to share the digital images by transmitting the images to a remote node of a communication network through an automatically determined closest entry point" (Br. 12).

Regarding dependent claim 6, Appellants argue:

c) Kagawa does not teach or suggest "automatically determining a closest entry point into the data communications network" (Br. 13).

Regarding argument a), the Examiner respectfully disagrees, and notes that Steinberg substantially discloses the claimed communication apparatus (discussed above in Grounds of Rejection and not traversed by Appellants) and teaches that it may communicate via a network (p. 7, ll. 12-16). Kleinrock specifically teaches that performance of the disclosed method would result in selection of the "most appropriate" access number, which may be the closest entry point (most proximal or geographically

preferred) to the network (col. 2, ll. 6-15; col. 6, ll. 29-45). One of ordinary skill in the art would have immediately recognized the benefits of using Kleinrock's communication selection method with Steinberg's device, since it would have allowed the data to be sent over the most appropriate network, potentially saving the user from incurring "enormous long distance charges" associated with selecting a distant access point (Kleinrock; col. 1, ll. 26-43).

Regarding argument b), it is initially noted that only dependent claims 9 and 12, which were not separately argued, contain limitations directed to "obtaining hard copy output" and "shar[ing] the digital images". Furthermore, the rejection of claims 9 and 12 was based on the combination of Steinberg and Kleinrock, and Steinberg teaches obtaining hard copy output (printing) (p. 20, l. 23) and "sharing" the digital images (p. 20, ll. 12-14).

Regarding argument c), it is noted that the rejection of claim 6 was based on the combination of Steinberg, Kleinrock and Kagawa. Kleinrock clearly discloses "automatically determining a closest entry point into the data communications network" (col. 2, ll. 6-15; col. 6, ll. 29-45). To the extent that Appellants may have intended to argue that Kagawa fails to teach the subject matter of claim 6 or is not combinable with Steinberg and Kleinrock, the Examiner respectfully disagrees. Steinberg teaches controlling the data rate of a transmission by increasing the transmission rate until an error occurs, at which time the error rate is reduced, or until an upper limit of the transmission rate is reached (col. 11, ll. 9-34; col. 11, l. 61 to col. 12, l. 16).

Regarding the combinability of Kagawa with Steinberg and Kleinrock, it is noted that Steinberg is directed to a communication device that transmits information via a network (p. 7, ll. 12-16). Kleinrock is directed to a method of selecting a particular network access point (col. 4, ll. 22-36). Kagawa is directed to a method for controlling the data rate of communication via a network (col. 2, ll. 11-16). Each of these references relates in some way to transmission of data across a network, and one of ordinary skill in the art could have combined the teachings of each to arrive at the claimed invention, and would have been motivated to do so to enable efficient and inexpensive communication of digital images across a communications network.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

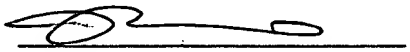
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Aaron Strange 

11/8/07

Conferees:



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